REMARKS/ARGUMENTS

This reply is in response to the Final Office Action dated November 19, 2007 and the Advisory Action dated February 11, 2008. Claims 23-49 are pending in the application and stand rejected.

Applicant has amended the claims, as shown above, to correct matters of form or to correct grammatical/typographical errors. As such, those amendments are not in response to the cited prior art nor directed to the patentability of the invention. Those proposed amendments are also not intended to narrow the claims or otherwise limit the scope of equivalents thereof. Entry of the foregoing amendments and reconsideration of the claims is respectfully requested.

35 U.S.C. § 103(a)

Claims 23-49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lind et al. (U.S. Patent Publication No. 2001/0003624; hereafter "Lind") in view of Agouri et al. (U.S. Patent No. 4,126,648; hereafter "Agouri"). The Examiner states "Lind et al disclose a multilayer film (paragraph 0013) comprising three layers (at least one layer; paragraph 0013) of a blend of high density polyethylene and low density polyethylene which are made from metallocene catalysts and are therefore metallocene polyethylenes (paragraph 0013); the metallocene polyethylene has a density of 0.940 g/cm^3 (paragraph 0020); Lind et al therefore disclose a and [sic] A/B/A structure, wherein the A layers are [sic] comprise a blend comprising a metallocene polyethylene having a density between 0.915 to 0.940 g/cm^3, and the B is a core layer comprising a blend comprising a high density polyethylene and a low density polyethylene." The Examiner further states that "Lind et al. is not limited to a film comprising a barrier layer; Lind also discloses a film comprising one layer comprising a single layer comprising an ethylene polymer (paragraph 0013) or a multilayer film comprising ethylene polymers made with a metallocene catalyst (paragraph 0013) for providing increased strength and faster bag speeds (paragraph 0013)."

The Examiner also states that "Agouri et al teach a film having 60-90 wt.% low density polyethylene and 40-10 wt.% high density polyethylene (column 2, lines 16-20) for the purpose

of obtaining a film having superior properties to a film comprising high density polyethylene alone (column 5, lines 60-64)."

The Examiner concludes, "It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a blend comprising 60-90 wt.% low density polyethylene and 40-10 wt.% high density polyethylene in Lind et al in order to obtain a film having superior properties to a film comprising high density polyethylene alone as taught by Agouri et al."

Applicant respectfully traverses the rejection on grounds that a combination of Lind and Agouri does not teach, show, or suggest the claimed invention. Every claim requires a film comprising an A/B/A structure. Agouri makes no mention of a multi-layer film. The disclosure of Agouri, and thus the teachings thereof, is limited to a single layer film made from a polystyrene that has been grafted to a blend of HDPE/LDPE. Agouri asserts that the graft blend is superior to HDPE alone. See, Agouri at col. 1, ll. 43-55 and at col. 5, ll. 59-64. Furthermore, it should be noted that Agouri is not directed to shrink films as is the claimed invention and Lind, but rather directed to sheaths for packaging foods.

Lind, however, discloses single and multilayer film structures. "The structures are comprised of polymers that have been polymerized in the presence of a single site catalyst, such as a metallocene." See, Lind at para. [0018]. Lind further states, "The structure of the present invention is comprised of an ethylene, propylene, or styrene polymer or copolymer formed by a polymerization reaction in the presence of a single site catalyst preferably a metallocene." Id. at para. [0025]. Figure 1 of Lind shows a cross section of a three layer coextruded structure of the invention. Lind discloses that the core layer can be: (1) a barrier layer; (2) a copolymer of ethylene and styrene formed using a single site catalyst in the polymerization reaction; or (3) a polystyrene formed by a polymerization reaction in the presence of a single site catalyst. Id. at para. [0026]. Lind describes a barrier material as polyvinylidene chloride copolymers such as copolymers of vinylidene chloride and vinyl chloride or an alkyl acrylate such as methyl acrylate; ethylene vinyl alcohol, nylon; or a metal foil such as aluminum. Not one of those three core layers, i.e. options (1), (2), and (3), includes HDPE alone.

Therefore, the Examiner's reason for replacing a core layer of Lind with the single blended layer of Agouir "in order to obtain a film having superior properties to a film comprising

high density polyethylene alone as taught by Agouri et al." is not applicable. The Examiner's articulated reason for combining Lind and Agouri is a possible solution to a possible problem that has no significance to the references themselves. As such, the Examiner has merely recreated the claimed invention using his own reasoning for combining random teachings of Lind and Agouri. Such hindsight reasoning is not permissible under 35 USC 103.

Indeed, there is no teaching, showing, or suggestion from the references themselves to replace the core layer of Lind with the single layer disclosed in Agouri. At best, a combination of Lind and Agouri may suggest replacing the entire three layer structure of Lind with the single layer film of Agouri. However, replacing the core layer of Lind with the layer of Agouri, as suggested by the Examiner, would render the three layer structure of Lind unsatisfactory for its intended purpose, a film having good oxygen barrier properties, because of the poor oxygen barrier properties of HDPE and LDPE. The Examiner is kindly reminded that a proposed modification cannot render the prior art unsatisfactory for its intended purpose. In re Gordon, 221 USPQ 1125 (Fed. Cir. 1984). If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. See, In re Gordon, 733 F.2d 900 (Fed. Cir. 1984); MPEP § 2143.01.

Alternatively, a combination of Lind and Agouri may suggest replacing the single layer embodiment of Lind with the single layer film of Agouri. However, such combination does not arrive at a film comprising an A/B/A structure, as required in every claim.

Therefore, a combination of Lind and Agouri does not teach, show, or suggest the claimed invention. Withdrawal of the rejection and allowance of the claims is respectfully requested.

Notwithstanding the foregoing discussion, claims 23-49 each require a skin layer comprising a mPE and a core layer B comprising a blend of LDPE and HDPE. Agouri does not teach, show, or suggest metallocene catalyzed polyolefins, and does not teach, show, or suggest core layers. Agouri merely discloses a single layer film constructed from a grafted polystyrene for use as a sheath, not a shrink film. Therefore, the references themselves provide no motivation or suggestion to simply replace the barrier/core layer of Lind with the single layer of

Agouri. For at least this reason, withdrawal of the rejection and allowance of the claims is respectfully requested.

As reiterated by the Supreme Court in KSR International Co. V. Teleflex Inc. (KSR), 550 U.S. ___, 82 USPQ2d 1385 (2007), the framework for determining obviousness under 35 USC 103 is stated in Graham v. John Deere Co., 383 U.S. 1 (1966). One step of that framework is to ascertain the differences between the prior art and the claims. "In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." See, M.P.E.P. § 2141.02 (emphasis in original) citing Stratoflex, Inc. v. Aeroquip Corp., 218 USPQ 871 (Fed. Cir. 1983).

Accordingly, the Examiner may not isolate only the improvement from the remainder of the claim. The entirety of the claim must be considered. The Examiner, therefore, appears to have distilled the invention down to a "gist" or "thrust" of the claimed invention being a core layer comprising a blend comprising 60-90 wt.% low density polyethylene and 40-10 wt.% high density polyethylene. Such analysis improperly disregards the requirement of analyzing the subject matter "as a whole" and is improper under 35 U.S.C. § 103. See, MPEP §2141.02 citing W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Therefore, the rejection based on 35 USC §103 is improper.

For reasons discussed herein and/or already of record, the claimed invention is not merely the substitution of a core layer of Lind with the HDPE/LDPE blend of Agouri. Withdrawal of the rejection and allowance of the claims is respectfully requested.

Advisory Action

In the Advisory Action dated February 11, 2008, the Examiner states, inter alia, that "because each layer of Lind et al is identical and comprises HDPE and LDPE, it would have been obvious for one of ordinary skill in the art to have provided for the composition of Agouri et al, which also comprises HDPE and LDPE, in each layer of Lind et al.

Applicants disagree and respectfully request the Examiner to specifically cite to the paragraph of Lind that discloses "each layer is identical and comprises HDPE and LDPE." Every multilayer film structure described in Lind beginning at paragraph [0026] has different

layers, and not every layer requires HDPE and/or LDPE. In fact, Lind describes at least eight different polymer or copolymers for each layer, which may be the same or different. Therefore, there are infinite possibilities for each layer, each possibility having no predictable outcome. Therefore, it appears that the Examiner's conclusion that "each layer of Lind et al is identical and comprises HDPE and LDPE" is a matter of convenience based on impermissible hindsight.

CONCLUSION

Having demonstrated that the cited references fail to disclose or suggest the invention as claimed, and all other formal issues having now been fully addressed, this application is believed to be in condition for allowance. Accordingly, Applicants request early and favorable reconsideration in the form of a Notice of Allowance.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, since this should expedite the prosecution of the application for all concerned.

If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2003B101A).

Respectfully submitted,

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